

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 813 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

TAHERALI J GANDHI

Versus

HEIRS OF ABDULHUSEIN I SARAIYA

Appearance:

MS KJ BRAHMBHATT for MS VP SHAH for Petitioner

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/05/2000

ORAL JUDGEMENT

#. The present revision application is directed against the judgment and decree passed by the learned Assistant Judge, Jamnagar in Regular Civil Appeal No.131/82 confirming the decree passed by the learned Civil Judge (Junior Division), Jamnagar in Regular Civil Suit No.253/78. The petitioner is the original plaintiff of

Civil Suit No.253/78. The aforesaid suit was filed by the plaintiff in the court of Civil Judge (Junior Division), Jamnagar for possession of the rented premises on the grounds of arrears of rent, subletting and bonafide requirement. It is the case of the plaintiff that the suit premises, that is, shop was let out to the defendant at the rate of Rs.30/- per month. That the defendant was in arrears of rent from 1.1.1973, therefore, the demand notice was served on him. However, he failed to comply with the same. It is also the case of the plaintiff that, he required the suit premises for his bonafide occupation. According to the plaintiff, the defendant had taken the suit premises in his individual capacity, but he has illegally sublet the suit premises to the firm, namely M/s Abdul Hussein Ismailji Sariya. The plaintiff, therefore, after serving the notice on the defendant, ultimately, filed the suit for possession.

#. The original tenant appeared in the suit and filed his written statement at Exh.21. He denied the case of subletting on the ground that, he was doing partnership business with his brother - Gulamali Ismail in the name and style of M/s Abdul Hussein Ismailji Sariya and that the aforesaid business in partnership is going on since inception of the tenancy. The defendant also denied the case of the plaintiff regarding arrears of rent. He equally denied the case of the plaintiff for bonafide requirement. During the pendency of the suit, original defendant - tenant died on 20.9.1978 and his heirs were brought on the record before the trial court. According to the heirs of the tenant, they have continued partnership business after the death of the original tenant.

#. The learned trial court framed various issues at Exh.27 and after recording the evidence and hearing the arguments of both the side, dismissed the said suit on 30.4.1982.

#. The plaintiff carried the matter further in appeal by way of Regular Civil Appeal No.131/82. The appeal also met with the same fate and the same was accordingly dismissed by the learned Assistant Judge, Jamnagar.

#. The present revision application is directed against the aforesaid order of the appellate court.

#. Ms.K.J.Brahmbhatt, learned advocate for the petitioner has argued that the courts below have committed an error of law in not decreeing the suit of the plaintiff on the ground of subletting. According to

the plaintiff, the suit premises was taken on lease by the deceased tenant in his individual capacity, and therefore, the deceased tenant has sublet the suit premises by creating so called partnership. It is not in dispute that the deceased tenant has taken the suit premises on lease for the purpose of doing the business. The suit premises was taken by the tenant in his individual capacity. However, according to the tenant, subsequently, the business was carried on by taking the partners in the business. The defendant - original tenant's son - Nooruddin joined the partnership on 28.1.1959. Subsequently, the aforesaid partnership was extended by adding more partners one Sabbir Hussein-son of the deceased defendant - Abdul Husein and Fakruddin, son of Gulamali. It has come in the evidence that the deceased defendant - Abdul Husein's brother Gulamali and his son separated from the partnership business and started their own business. The deceased defendant and his son continued the said business. The learned appellate Judge has given very cogent reasons for believing genuineness of the said partnership in para 13 of his judgment. It is found that the deceased defendant-Abdul Husein started the business in the said shop and continued the business in the suit shop till his death, that is, 20.5.1978 and his sons were the partners in the said business. Initially, his brother and his sons were also partners. It is found that, no stranger was inducted in the said partnership. It is also found that the deceased defendant had never parted with the possession of the suit shop. The learned appellate Judge has also found that, as per the partnership deeds at Exh.77 and 78, there is nothing on record to show that, the tenancy of the suit shop vested with the partners or the partners were given interest or share in the tenancy rights of the suit shop. Interest in the tenancy rights was never transferred in favour of the partnership firm or in favour of the partners of the firm. The tenancy rights of the suit shop remained intact with the deceased defendant - Abdul Husein.

#. Considering the evidence on record, the appellate court found that, there was genuine partnership business, and therefore, it cannot be said that, taking the partners in the business, would amount to subletting. As stated earlier, tenancy rights continued in favour of the deceased tenant in his personal capacity. It is also found that, partnership document at Exh.77 cannot be said to be sham or bogus and that the deceased tenant continued to do the business in the suit shop till he died. The aforesaid finding of fact arrived at by the appellate court confirming the finding of the trial court

is absolutely just and as per the evidence on record. It cannot be said that the appellate court has committed an error of law while coming to the conclusion that there was no subletting by the original tenant. I do not find any infirmity or any error in the judgment of the lower appellate court. When, both the courts below have concurrently found that, there is no subletting, no interference of this court in this civil revision application is called for on the aforesaid question about subletting.

#. So far as the prayer of the plaintiff regarding the possession on the ground of bonafide requirement is concerned, the plaintiff has failed to point out any ground regarding bonafide requirement. The oral say of the plaintiff that, in view of the partition between the brothers, he has to vacate the shop in which he is doing the business was not believed. It is found that the plaintiff has put forward false ground to recover the possession of the suit shop. The learned advocate for the petitioner has not argued any substantial point on the ground of bonafide requirement.

#. So far as the question about arrears of rent is concerned, in response to the demand notice, the defendant had sent the entire amount Rs.930/- which was accepted by the plaintiff, and therefore, whatever the amount demanded, was sent by the defendant, and therefore, there was no question of any arrears of rent on the part of the defendant for giving any cause of action to the plaintiff for filing the suit on the ground of arrears of rent.

##. In view of what is stated above, there is absolutely no substance in this civil revision application. Civil Revision Application is accordingly dismissed. Rule discharged. No order as to costs.

(P.B.Majmudar,J.)

(pathan)